Supreme Court, U.S.
FILED
DEC 22 1992
OFFICE OF THE CLERK

No. 92-796

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

WILLIAM N. ODOM, JR.,

Petitioner,

v.

GEORGE T. LEWIS; CHARLES G. BLACK; J. J. HENRY; JOHN C. ROBERTSON; MICHAEL B. VAUGHN; RUBY I. MILLER; LILLIAN V. WALLS; SHELBY COUNTY GOVERNMENT; and STATE OF TENNESSEE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

HENRY V. SUTTON
Counsel of Record

MARK W. GARRETT
SUTTON, WILSON & GARRETT
Attorneys for Respondents
Ruby I. Miller, Michael B. Vaughn,
Lillian V. Walls
100 North Main Building
Suite 2904
Memphis, TN 38103
(901) 523-1641

11 pp

QUESTION PRESENTED FOR REVIEW

Whether the District Court erred in dismissing Petitioner's Complaint based on failure to state a cause of action upon which relief can be granted and based on the expiration of the applicable statute of limitation.

TABLE OF CONTENTS

PAGE

QUESTION PRESENTED FOR REVIEW i

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT 3

1. Failure To State A Claim Upon Which Relief Can Be Granted 3

2. Failure To State A Class-Based Motivation For The Alleged Acts 4

3. Petitioner's Cause Of Action Is Barred By Applicable Statute Of Limitations 5

CONCLUSION 6

TABLE OF AUTHORITIES

CASES: PAGE

Briscoe v. LaHue, 663 F.2d 713 (7th Cir. 1981) aff'd on other grounds, 460 U.S. 325, 103 S.Ct. 1108, 75 L.Ed.2d 96 (1983) 3

Chapman v. City of Detroit, 808 F.2d 459 (6th Cir. 1986) 3

Fiesel v. Board of Education, 675 F.2d 522 (2nd Cir. 1982) 5

Griffin v. Breckenridge, 403 U.S. 88, 91 S.Ct., 1790, 29 L.Ed.2d 338 (1971) 4

Gutierrez v. Lynch, 826 F.2d 1534 (6th Cir. 1987) 4

Kunik v. Racine County Wisconsin, 946 F.2d 1574 (7th Cir. 1991) 3

Sevier v. Turner, 742 F.2d 262 (6th Cir. 1984) 5

Studen v. Beebe, 588 F.2d 560 (6th Cir. 1978) 4

Young v. Biggers, 938 F.2d 565 (5th Cir. 1991) 3

STATUTES:

42 U.S.C. Sec. 1983 ..... 1, 3, 5
42 U.S.C. Sec. 1985 ..... 1, 3, 4, 5
42 U.S.C. Sec. 1988 ..... 1, 3
T. C. A. Sec. 28-3-104 5

RULES CITED: PAGE

United States Court of Appeals for the Sixth Circuit Rule 9 2

United States Supreme Court Rule 10 ..... 4, 6

No. 92-796

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

WILLIAM N. ODOM, JR.,

Petitioner,

v.

GEORGE T. LEWIS; CHARLES G. BLACK; J. J. HENRY;
JOHN C. ROBERTSON; MICHAEL B. VAUGHN;
RUBY I. MILLER; LILLIAN V. WALLS;
SHELBY COUNTY GOVERNMENT;
and STATE OF TENNESSEE,

Respondents.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Sixth Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS MICHAEL B. VAUGHN, RUBY I. MILLER AND LILLIAN V. WALLS

STATEMENT OF CASE

The Complaint herein was filed on February 23, 1989. The Complaint alleges that the named Respondents conspired to deprive Petitioner of his civil rights in violation of 42 U.S.C. Sections 1983, 1985 and 1988 and the First, Fourth, Sixth and Fourteenth Amendments to the Constitution of the United States. The Complaint alludes to certain pendent state claims but it does not state with any particularity what those state claims might be.

The Complaint states that on or about September 20, 1985, Petitioner secretly tape recorded a telephone conversation between himself and Vaughn wherein sexual aspects of their homosexual relationship were discussed. Shortly thereafter, Petitioner allegedly

told Vaughn of the existence of the tape recordings. Petitioner alleges that Walls, Miller, and Vaughn, through Attorney Black, on February 7, 1986, filed a Complaint for Injunction requesting a Temporary Restraining Order in the Chancery Court of Shelby County, Tennessee. The Temporary Restraining Order sought to prevent Petitioner from playing the tape recordings to others. At some point, the Temporary Restraining Order was issued by the Chancery Court and Petitioner was subsequently served with the Temporary Restraining Order. Further, Petitioner alleges that he, in fact, violated the Temporary Restraining Order on February 7, 1986. The Complaint For Injunction filed in Chancery Court was amended in order to ask for damages arising from the violation of the Temporary Restraining Order and also asking that Petitioner herein be found in contempt of Court.

The Complaint alleges that at the Chancery Court trial, on December 8, 1986, Mr. Odom was found guilty of outrageous conduct, and a judgment in the amount of $30,000.00 was entered against him. Mr. Odom was also found guilty of contempt of Court in connection with the violation of the Temporary Restraining Order, and was sentenced to serve ten (10) days in jail. On January 5, 1987, Mr. Odom entered the Shelby County Correctional Center and served ten (10) days. The Complaint alleges that on appeal, the judgment of the Chancery Court was reversed, the Tennessee Court of Appeals holding that the Chancery Court lacked subject matter jurisdiction.

In the instant action, all of the Respondents filed Motions To Dismiss on the grounds that the Complaint failed to state a claim upon which relief could be granted and that the applicable statute of limitations barred Petitioner's cause of action. On October 4, 1991, an Order was entered granting Defendants' Motions and dismissing the action. Judgment was entered on October 11, 1991. Petitioner's Notice of Appeal was filed on November 8, 1991. By Order dated August 10, 1992, the Court of Appeals for the Sixth Circuit affirmed the judgment of the District Court without oral argument pursuant to Rule 9 of the Rules of the Sixth Circuit.

SUMMARY OF THE ARGUMENT

The District Court's Order, affirmed by the Sixth Circuit Court of Appeals without a hearing, dismissed Petitioner's Complaint on the basis of:

1. the failure to state factual allegations of the existence of a conspiracy;

2. the failure to allege any discriminatory or class-based motivation for the alleged conspiracy or acts;

3. and the failure to file the Complaint within the applicable one (1) year period from the time he knew or reasonably should have known of the alleged injury.

The dismissal of the Complaint by the District Court, and affirmed by the Court of Appeals, does not present special and important reasons for this Court's discretionary review on writ of certiorari.

ARGUMENT

1. PETITIONER'S FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

Petitioner's civil rights complaint, based on alleged constitutional violations regarding 42 U.S.C. Sections 1983, 1985 and 1988, was properly dismissed by the District Court for failure to state a claim. The Sixth Circuit Court of Appeals reviewed the District Court's determination, and held that Mr. Odom could prove no set of facts in support of his claims that would entitle him to relief. The case was properly reviewed in a light most favorable to Mr. Odom, accepting all his allegations as true facts. There was no deviation or departure from accepted judicial proceedings to merit the attention of this Court.

There is no important federal question involved in this case since conclusory allegations of conspiracy, unsupported by any factual allegations, will not withstand a motion to dismiss. Factual allegations to support the claim of the existence of a conspiracy are required. Briscoe v. LaHue, 663 F.2d 713, 723 (7th Cir. 1981), affirmed, 460 U.S. 325, 103 S.Ct. 1108, 75 L.Ed.2d 96 (1983); Chapman v. City of Detroit, 808 F.2d 459, 465 (6th Cir. 1986); Gutierrez v. Lynch, 826 F.2d 1534, 1538, 1539 (6th Cir. 1987).

The Sixth Circuit Court of Appeals followed the generally accepted rule that conclusory statements alleging a conspiracy are insufficient and must instead be supported by material facts. Kunik v. Racine County, Wisconsin, 946 F.2d 1574, 1580 (7th Cir. 1991); Young v.

Biggers, 938 F.2d 565, 569 (5th Cir. 1991); Gutierrez v. Lynch, 826 F.2d 1534, 1539 (6th Cir. 1987). Therefore, the Sixth Circuit Court of Appeals rendered a decision that in no way conflicts with the decision of another court of appeals on the failure to state material facts to support a conspiracy claim.

The decision rendered in the lower courts regarding Petitioner's failure to specify facts that would sufficiently state a claim upon which relief can be granted, does not present any of the reasons or character of reasons to be considered by this Court as set out in Rule 10 of the Supreme Court rules. The ruling of the District Court and the issues presented in this case are not unique or special, and do not merit review by this Court.

2. FAILURE TO STATE A CLASS-BASED MOTIVATION FOR ALLEGED ACTS.

The Petitioner's Complaint failed to state a claim that these Respondents conspired with others to deprive him of equal protection of the law, or equal privileges and immunities under the law. The Complaint omits the required element for a cause of action under 42 U.S.C. Section 1985 of some class-based motivation for the alleged acts of the alleged conspirators. Griffin v. Breckenridge, 403 U.S. 88, 102, 91 S.Ct. 1790, 29 L.Ed.2d 338 (1971); Studen v. Beebe, 588 F.2d 560, 564 (6th Cir. 1978).

Due to the absence of alleged facts to indicate racial or some other class-based motivation behind the alleged conspirators' acts, there is no important federal question nor any deviation from the usual judicial proceedings regarding deprivation of equal protection of the law.

A complaint under 42 U.S.C. Section 1985 (3) is required to include an invidiously discriminatory animus behind the actions of alleged conspirators. The required element is not included in Petitioner's Complaint. Therefore, the Sixth Circuit Court of Appeal's decision on this particular issue is not in conflict with the decision of another United States Court of Appeals on the same matter, nor does this issue present an important question of federal law.

The omission of the required element for a Section 1985 cause of action, resulting in a dismissal by the District Court, fails to indicate any special or important reason that would justify the granting of the Petitioner's writ of certiorari.

3. PETITIONER'S CAUSE OF ACTION IS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

Petitioner failed to file his Complaint within the applicable one (1) year period from the time he knew or reasonably should have known of the injury which was the basis of this action. Section 28-3-104 of the Tennessee Code Annotated provides for a one (1) year period of limitation for actions, "for compensatory or punitive damages, or both, brought under the federal civil rights statutes...." This period of limitation applies to actions founded upon both 42 U.S.C. Section 1983 and Section 1985 (3). Sevier v. Turner, 742 F.2d 262, 272 (6th Cir. 1984).

Federal law, however, governs the question of when the limitation period begins to run. Fiesel v. Board of Education, 675 F.2d 522, 524 (2nd Cir. 1982). The statute begins to run from the time the plaintiff knows, or has reason to know of the injury which forms the basis of his claim.

Petitioner filed the Complaint on February 23, 1989, claiming he had been deprived of his rights when he was found in contempt of court for violating an injunction issued in a Chancery Court suit. A judgment was rendered against Mr. Odom on December 8, 1986 in the amount of $30,000.00 when he was found guilty of outrageous conduct. Additionally, Petitioner was found guilty of contempt of court in connection with the violation of the Temporary Restraining Order, and was sentenced to ten (10) days in jail. Mr. Odom's ten (10) day sentence began on January 5, 1987. This confinement is the basis for his Complaint. Therefore, all the acts complained of by Petitioner occurred more than one year prior to the filing of his lawsuit. Additionally, Petitioner does not contend that there was anything done by Respondents to conceal the injury and damages sustained so as to toll the running of the statutory period. Also, as stated by the District Court, the last alleged act of conspiracy occurred November 2, 1989, when an appeal was posted, well over a year prior to the filing of the Complaint.

There is no important federal question presented, deviation from usual judicial proceedings, or conflict with other decisions. The Complaint, on its face, clearly indicates that the lawsuit was filed more than one (1) year after Mr. Odom knew, or through reasonable diligence should have known, of the alleged injury which is the basis of his Complaint.

Therefore, the Petitioner's request of this Court to review the lower Court's determination on this issue fails to fall within any of the reasons or character of reasons set out in Rule 10 of the Supreme Court Rules.

CONCLUSION

For the foregoing reasons, the Respondents respectfully request that the petition for a writ of certiorari be denied. The discretionary review of this case is unwarranted pursuant to Rule 10 of the Rules of the Supreme Court of the United States.

Respectfully submitted,

/s/ HENRY V. SUTTON
Counsel of Record

MARK W. GARRETT

SUTTON, WILSON & GARRETT

Attorneys for Respondents
Ruby I. Miller, Michael B. Vaughn
and Lillian V. Walls

100 North Main Building
Suite 2904
Memphis, TN 38103
(901) 523-1641